**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.294 OF 2006**
**IN**
**SUIT NO.3891 OF 1995**

State Bank of India & Ors. ..Plaintiffs

V/s.

Tata Motors Limited & Ors. ..Defendants

Mr.R.N.Bhagatjee i/b. M/s.S.Ashwinikumar & Co. with F D'vitre for the plaintiffs
Mr.N.Engineer i/b.M/s.Mulla & Mulla for the defendant Nos.30 & 45
Mr.Avinsh Joshi i/b. M/s.Mulla & Mulla for the defendant Nos.1 & 2

**CORAM : S.A.BOBDE, J.**

**DATE : 23RD FEBRUARY, 2007**

**P.C.**

1. By this Notice of Motion, the plaintiffs seek an injunction restraining the defendant Nos.4 to 45 from transferring shares allegedly belonging to the plaintiffs, to anyone else. The plaintiffs have filed a suit, inter alia, for a declaration that the purchases made by the defendant Nos.4 to 45 are void and illegal.

2. 4600 shares belonging to the defendant No.1

were apparently purchased by the plaintiffs. There is no dispute that this purchase was made some time in the year 1992. The plaintiffs apparently did not receive these shares. They therefore, filed this suit and applied for an injunction. On 12th November, 1997, the learned single Judge of this Court (S.H.Kapadia, J.) has granted an injunction restraining the defendant Nos.1 & 2 from transferring 2250 shares to third party. The learned single Judge specifically refused an injunction in regard to 2350 shares (in Schedule II Exhibit I to the plaint) on the ground that though the plaintiffs were conscious from the letter dated 8th May, 1995 that these shares have been transferred by the defendant Nos.1 & 2 to the third party, they have neglected to join the transferees as parties to the suit on the principle that delay defeats equity. The learned single Judge dismissed the plaintiffs' motion in regard to 2350 shares which were transferred to the third party.

3. After S.H.Kapadia, J., decided the injunction application as above on 12th November,

1997, the plaintiffs apparently slept over the matter till sometime in April, 2005. They moved a Chamber Summons for addition of the several third party transferees as parties to the suit. The Chamber Summons was allowed some time on 4th October, 2005. Thereafter, the plaintiffs took out this notice of motion for an injunction against the newly added defendant Nos.4 to 45.

4. Out of the newly added defendant Nos.4 to 45, only the defendant Nos.30 & 45 are represented before this Court. Mr.Engineer, the learned counsel for the defendant Nos.30 & 45 submitted that the suit itself is barred by limitation since it must be taken to have been instituted against those defendants on 4th October, 2005 i.e. when they were joined as parties to the suit, even though the suit itself was instituted on 8th October, 1995. The learned counsel relied upon Section 21 of the Limitation Act which reads as follows :-

> "21. Effect of substituting or adding new plaintiff or defendant – (1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have

been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

There is no doubt that the proviso permits the Court to treat the suit as having been instituted from an earlier date but there is no such order of this Court permitting this. The suit must therefore be taken to have been instituted against the newly added defendants on 4th October, 2005 and is therefore prima facie barred by the law of limitation. There is no merit in the plaintiffs' prayer for an injunction in this matter. Moreover, it appears that the plaintiffs have not demonstrated any good faith in seeing the defendants for such a long period. They were aware from the date that the shares have been sold to other purchaser. The plaintiffs not only did not

join those transferees in the suit which was filed on 8th October, 1995 but in spite of an observation of delay made by this Court in the order dated 12th November, 1997 they took no steps suit whatsoever to join the newly added defendants till 7th January, 2005. This gross negligence clearly disentitle the plaintiffs to any relief.

5. More over, it appears that the defendant Nos.4 to 35 appear to have purchased shares from the plaintiffs itself as is apparent from the document at Exhibit B. Though this is denied on behalf of the plaintiffs.

6. In view of the above, there is no merit in the motion for injunction. The same is, therefore, dismissed with costs in the sum of Rs.10,000 payable to the defendant Nos.1 and 2 and the sum of Rs.10,000 payable to the defendant Nos.30 and 45.

**(S.A.BOBDE, J.)**